

CHAPTER 337

HEALTH AND ENVIRONMENT

HOUSE BILL 19-1076

BY REPRESENTATIVE(S) Michaelson Jenet and Larson, Caraveo, Cutter, Jackson, Mullica, Arndt, Buentello, Duran, Exum, Galindo, Garnett, Herod, Kipp, McCluskie, Roberts, Snyder, Tipper, Titone, Becker, Bird, Buckner, Hansen, Jaquez Lewis, Kennedy, Landgraf, Lontine;
also SENATOR(S) Priola and Donovan, Ginal, Court, Fields, Foote, Gonzales, Moreno, Pettersen, Story, Tate, Todd, Williams A., Garcia.

AN ACT

CONCERNING UPDATES TO THE "COLORADO CLEAN INDOOR AIR ACT", AND, IN CONNECTION THEREWITH, REMOVING CERTAIN EXCEPTIONS AND ADDING PROVISIONS RELEVANT TO THE USE OF ELECTRONIC SMOKING DEVICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 25-14-202 as follows:

25-14-202. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) It is in the best interest of the people of this state to protect ~~nonsmokers~~ THE PUBLIC from involuntary exposure to ~~environmental tobacco and marijuana~~ EMISSIONS FROM SECONDHAND smoke AND ELECTRONIC SMOKING DEVICES (ESD) in most indoor areas open to the public, IN public meetings, IN food service establishments, and IN places of employment; ~~The general assembly further finds and determines that~~ AND

(b) ~~A balance should be struck between the health concerns of nonconsumers of tobacco products and combustible marijuana and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products, and combustible marijuana in certain designated public areas and in private places~~ ESD EMISSIONS CONSIST OF ULTRAFINE PARTICLES THAT ARE SIGNIFICANTLY MORE HIGHLY CONCENTRATED THAN PARTICLES WITHIN CONVENTIONAL TOBACCO SMOKE. THERE IS CONCLUSIVE EVIDENCE THAT MOST ESDs CONTAIN AND EMIT NOT ONLY NICOTINE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

BUT ALSO MANY OTHER POTENTIALLY TOXIC SUBSTANCES AND THAT ESDS INCREASE AIRBORNE CONCENTRATIONS OF PARTICULATE MATTER AND NICOTINE IN INDOOR ENVIRONMENTS. IN ADDITION, STUDIES SHOW THAT PEOPLE EXPOSED TO ESD EMISSIONS ABSORB NICOTINE AT LEVELS COMPARABLE TO THE LEVELS EXPERIENCED BY PASSIVE SMOKERS. MANY OF THE ELEMENTS IDENTIFIED IN ESD EMISSIONS ARE KNOWN TO CAUSE RESPIRATORY DISTRESS AND DISEASE, AND ESD EXPOSURE DAMAGES LUNG TISSUES. FOR EXAMPLE, HUMAN LUNG CELLS THAT ARE EXPOSED TO ESD AEROSOL AND FLAVORINGS SHOW INCREASED OXIDATIVE STRESS AND INFLAMMATORY RESPONSES.

(2) Therefore, the general assembly hereby declares that the purpose of this part 2 is to preserve and improve the health, comfort, and environment of the people of this state by ~~limiting exposure to tobacco and marijuana smoke~~ PROTECTING THE RIGHT OF PEOPLE TO BREATHE CLEAN, SMOKE-FREE AIR. NOTHING IN THIS PART 2 IS INTENDED TO INHIBIT A PERSON'S ABILITY TO TAKE MEDICINE USING AN INHALER OR SIMILAR DEVICE, NOR TO PREVENT AN EMPLOYER OR BUSINESS OWNER FROM MAKING REASONABLE ACCOMMODATION FOR THE MEDICAL NEEDS OF AN EMPLOYEE, CUSTOMER, OR OTHER PERSON IN ACCORDANCE WITH THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", AS AMENDED, 42 U.S.C. SEC. 12101 ET SEQ.

SECTION 2. In Colorado Revised Statutes, 25-14-203, **amend** (7), (16), and (18); **repeal** (1); and **add** (4.5) as follows:

25-14-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) ~~"Airport smoking concession" means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.~~

(4.5) "ELECTRONIC SMOKING DEVICE" OR "ESD":

(a) MEANS ANY PRODUCT, OTHER THAN A PRODUCT DESCRIBED IN SUBSECTION (4.5)(c) OF THIS SECTION, THAT CONTAINS OR DELIVERS NICOTINE OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN CONSUMPTION AND THAT CAN BE USED BY A PERSON TO ENABLE THE INHALATION OF VAPOR OR AEROSOL FROM THE PRODUCT;

(b) INCLUDES ANY PRODUCT DESCRIBED IN SUBSECTION (4.5)(a) OF THIS SECTION AND ANY SIMILAR PRODUCT OR DEVICE, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR; AND

(c) DOES NOT INCLUDE:

(I) A HUMIDIFIER OR SIMILAR DEVICE THAT EMITS ONLY WATER VAPOR; OR

(II) AN INHALER, NEBULIZER, OR VAPORIZER THAT IS APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR THE DELIVERY OF MEDICATION.

(7) "Entryway" means the outside of the front or main doorway leading into a

building or facility that is not exempted from this part 2 under section 25-14-205. "Entryway" also includes the area of public or private property within a specified radius outside of the doorway. The specified radius ~~shall~~ MAY be determined by the local authority ~~or~~ PURSUANT TO SECTION 25-14-207 (2)(a), BUT MUST BE AT LEAST TWENTY-FIVE FEET UNLESS SECTION 25-14-207 (2)(a)(II)(B) OR (2)(a)(II)(C) APPLIES. If the local authority has not acted, the specified radius ~~shall be fifteen~~ IS TWENTY-FIVE feet.

(16) "Smoking" means ~~the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana~~ INHALING, EXHALING, BURNING, OR CARRYING ANY LIGHTED OR HEATED CIGAR, CIGARETTE, OR PIPE OR ANY OTHER LIGHTED OR HEATED TOBACCO OR PLANT PRODUCT INTENDED FOR INHALATION, INCLUDING MARIJUANA, WHETHER NATURAL OR SYNTHETIC, IN ANY MANNER OR IN ANY FORM. "SMOKING" ALSO INCLUDES THE USE OF AN ESD.

(18) "Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, INCLUDING ESDs, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

SECTION 3. In Colorado Revised Statutes, 25-14-204, **amend** (1) introductory portion, (1)(k), (1)(u)(I), (1)(bb), (1)(cc), and (2); **repeal** (1)(q); and **add** (1)(dd), (1)(ee), (1)(ff), and (3) as follows:

25-14-204. General smoking restrictions. (1) Except as provided in section 25-14-205, ~~and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke,~~ smoking ~~shall~~ IS NOT be permitted and ~~no~~ A person shall NOT smoke in any indoor area, including: ~~but not limited to:~~

(k) (I) Any place of employment that is not exempted, WHETHER OR NOT OPEN TO THE PUBLIC AND REGARDLESS OF THE NUMBER OF EMPLOYEES.

(II) In the case of employers who own facilities otherwise exempted from this part 2, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe ~~environmental tobacco~~ SECONDHAND smoke ~~Every employee shall have a right to work in an area free of environmental tobacco smoke~~ AND EMISSIONS FROM ELECTRONIC SMOKING DEVICES.

(q) ~~Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;~~

(u) (I) The common areas of retirement facilities, publicly owned housing facilities, and ~~except as specified in section 25-14-205 (1)(k),~~ nursing homes, but not including any resident's private residential quarters. ~~or areas of assisted living facilities specified in section 25-14-205 (1)(k).~~

(bb) Other educational and vocational institutions; ~~and~~

(cc) ~~The entryways of all buildings and facilities listed in paragraphs (a) to (bb)~~

~~of this subsection (1):~~ AIRPORTS;

(dd) HOTEL AND MOTEL ROOMS;

(ee) ASSISTED LIVING FACILITIES, INCLUDING NURSING FACILITIES AS DEFINED IN SECTION 25.5-4-103 AND ASSISTED LIVING RESIDENCES AS DEFINED IN SECTION 25-27-102; AND

(ff) THE ENTRYWAYS OF ALL BUILDINGS AND FACILITIES LISTED IN SUBSECTIONS (1)(a) TO (1)(ee) OF THIS SECTION.

(2) A cigar-tobacco bar:

(a) Shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005; ~~A cigar-tobacco bar~~ AND

(b) Shall PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE AND SHALL display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age ~~must be accompanied by a parent or guardian~~ MAY NOT ENTER."

(3) A RETAIL TOBACCO BUSINESS:

(a) SHALL PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE; AND

(b) SHALL DISPLAY SIGNAGE IN AT LEAST ONE CONSPICUOUS PLACE AND AT LEAST FOUR INCHES BY SIX INCHES IN SIZE STATING EITHER:

(I) "SMOKING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE MAY NOT ENTER."; OR

(II) IN THE CASE OF A RETAIL TOBACCO BUSINESS THAT DESIRES TO ALLOW THE USE OF ESDs BUT NOT OTHER FORMS OF SMOKING ON THE PREMISES, "VAPING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE MAY NOT ENTER."

SECTION 4. In Colorado Revised Statutes, 25-14-205, **amend** (1) introductory portion, (1)(d), (1)(g), and (1)(i); and **repeal** (1)(c), (1)(f), (1)(h), and (1)(k) as follows:

25-14-205. Exceptions to smoking restrictions. (1) This part 2 ~~shall~~ DOES not apply to:

(c) ~~A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;~~

(d) Any retail tobacco business; EXCEPT THAT THE REQUIREMENTS IN SECTION 25-14-204(3) AND ANY RELATED PENALTIES APPLY TO A RETAIL TOBACCO BUSINESS;

(f) ~~An airport smoking concession;~~

(g) The outdoor area of any business; OR

~~(h) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;~~

(i) A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars. ~~or~~

~~(k) (f) The areas of assisted living facilities:~~

~~(A) That are designated for smoking for residents;~~

~~(B) That are fully enclosed and ventilated; and~~

~~(C) To which access is restricted to the residents or their guests.~~

~~(H) As used in this paragraph (k), "assisted living facility" means a nursing facility, as that term is defined in section 25-5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102.~~

SECTION 5. In Colorado Revised Statutes, 25-14-206, **amend** (1); and **repeal** (2) as follows:

25-14-206. Optional prohibitions. (1) The owner or manager of any place ~~not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205~~ may post signs prohibiting smoking, ~~or providing smoking and nonsmoking areas.~~ Such posting shall have the effect of including such place ~~or the designated nonsmoking portion thereof,~~ in the places where smoking is prohibited or restricted pursuant to this part 2.

~~(2) If the owner or manager of a place not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by section 25-14-204 (1)(k)(H), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (1) of this section.~~

SECTION 6. In Colorado Revised Statutes, 25-14-207, **amend** (2)(a) as follows:

25-14-207. Other applicable regulations of smoking - local counterpart regulations authorized. (2) (a) (I) A local authority may, pursuant to article 16 of title 31, C.R.S.; a municipal home rule charter, or article 15 of title 30, C.R.S.; enact, adopt, and enforce smoking regulations that cover the same subject matter as the various provisions of this part 2; ~~NO EXCEPT THAT, UNLESS OTHERWISE AUTHORIZED UNDER SUBSECTION (2)(a)(II)(B) OR (2)(a)(II)(C) OF THIS SECTION,~~ A local authority may NOT adopt ~~any~~ A local regulation of smoking that is less stringent than the provisions of this part 2. ~~except that~~

~~(II) (A) A local authority may IS SPECIFICALLY AUTHORIZED TO specify a radius of less MORE than fifteen TWENTY-FIVE feet for the area included within an~~

entryway.

(B) A LOCAL REGULATION THAT WAS ADOPTED BY A LOCAL AUTHORITY BEFORE JANUARY 1, 2019, AND THAT SPECIFIES A RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN ENTRYWAY REMAINS VALID AND MUST BE GIVEN EFFECT AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED.

(C) IF A PERSON OWNS OR LEASES BUSINESS PREMISES THAT WERE UNDER CONSTRUCTION OR RENOVATION ON JULY 1, 2019, AND THAT COMPLIED WITH A LOCAL REGULATION OF SMOKING THAT SPECIFIED A RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN ENTRYWAY, AND, AS OF JULY 1, 2019, HAS APPLIED FOR OR RECEIVED FROM THE MUNICIPALITY, CITY AND COUNTY, OR COUNTY IN WHICH THE PREMISES ARE LOCATED, A CERTIFICATE OF OCCUPANCY FOR THE STRUCTURE TO BE USED FOR THE BUSINESS PREMISES, THE PERSON IS DEEMED IN COMPLIANCE WITH ALL LOCAL REGULATIONS SPECIFYING THE RADIUS OF THE AREA INCLUDED WITHIN AN ENTRYWAY.

SECTION 7. In Colorado Revised Statutes, 25-14-208, **amend** (3) as follows:

25-14-208. Unlawful acts - penalty - disposition of fines and surcharges.

(3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 25-14-208.5, a person who violates this part 2 is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

SECTION 8. In Colorado Revised Statutes, **add** 25-14-208.5 as follows:

25-14-208.5. Signage violations - limitation on fines. (1) FOR A VIOLATION OF SECTION 25-14-204 (2) OR (3), THE PENALTY SHALL BE AS FOLLOWS:

(a) A WRITTEN WARNING FOR A FIRST VIOLATION COMMITTED WITHIN A TWENTY-FOUR-MONTH PERIOD; AND

(b) FINES AS SPECIFIED IN SECTION 25-14-208 (3) FOR A SECOND OR SUBSEQUENT VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, NO FINE FOR A VIOLATION OF SECTION 25-14-204 (2) OR (3) SHALL BE IMPOSED UPON A PERSON THAT CAN ESTABLISH AS AN AFFIRMATIVE DEFENSE THAT, PRIOR TO THE DATE OF THE VIOLATION, IT:

(a) HAD ADOPTED AND ENFORCED A WRITTEN POLICY AGAINST ALLOWING PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER THE PREMISES;

(b) HAD INFORMED ITS EMPLOYEES OF THE APPLICABLE LAWS REGARDING THE PROHIBITION OF PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER OR REMAIN IN AREAS WHERE SMOKING IS PERMITTED;

(c) REQUIRED EMPLOYEES TO VERIFY THE AGE OF PERSONS ON THE PREMISES BY WAY OF PHOTOGRAPHIC IDENTIFICATION; AND

(d) HAD ESTABLISHED AND IMPOSED DISCIPLINARY SANCTIONS FOR NONCOMPLIANCE.

(3) THE AFFIRMATIVE DEFENSE ESTABLISHED IN SUBSECTION (2) OF THIS SECTION MAY BE USED ONLY TWICE AT EACH LOCATION WITHIN ANY TWENTY-FOUR-MONTH PERIOD.

SECTION 9. In Colorado Revised Statutes, 30-15-401, **amend** (1.5) as follows:

30-15-401. General regulations - definitions. (1.5) In addition to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance:

(a) Prohibiting minors from possessing cigarettes or tobacco products, as defined by section 39-28.5-101 (5); ~~C.R.S.~~ AND

(b) LIMITING SMOKING, AS DEFINED IN SECTION 25-14-203 (16), IN ANY MANNER THAT IS NO LESS RESTRICTIVE THAN THE LIMITATIONS SET FORTH IN THE "COLORADO CLEAN INDOOR AIR ACT", PART 2 OF ARTICLE 14 OF TITLE 25.

SECTION 10. Effective date. (1) Except as provided in subsection (2) of this section, this act takes effect July 1, 2019.

(2) Section 25-14-204 (2) and (3), as amended and enacted, respectively, in section 3 of this act, take effect October 1, 2019.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2019